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Hot Topics

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FROM THE CHIEF OF PUBLIC AFFAIRS

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Don't Ask, Don't Tell

Army Homosexual Conduct Policy

THIS issue of *Hot Topics* is intended to help commanders implement the "Don't Ask, Don't Tell" policy on homosexual conduct and to protect and ensure the safety of all soldiers. Army policy on homosexual conduct balances the legal prohibition of homosexual conduct with soldiers' privacy rights. The intent is to have good order and discipline and good morale throughout the armed forces. Commanders are front line administrators of the policy.

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Chief of Public Affairs

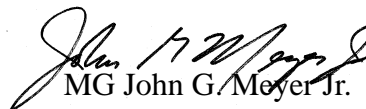
THIS issue of *Hot Topics* is intended to clarify for all soldiers and Army civilians the policy on homosexual conduct. The secretary of the Army and the chief of staff have addressed this issue in a recent message to the field, the text of which is provided for you here:

“Service in our Army is honorable and respected by the citizens of this country. Soldiers who offer their commitment and their lives in this service should and must be treated with dignity, honor and respect. Respect for our fellow soldiers demands that we speak with respect for all. Any derogatory words about any group, including those based upon sexual orientation, that are prejudicial to good order and discipline, may subject the soldier to adverse administrative actions or disciplinary measures under the UCMJ. Every soldier has the right to expect treatment consistent with our core values, a safe and secure environment, and the support of their chain of command. Whenever we violate the trust of any soldier, we violate the trust of all soldiers.

“We affirm that treating soldiers with dignity and respect is a bedrock value for the Army. We declare that there is no room for harassment or threats to any soldier in our Army for any reason. Therefore, as the senior leaders of the Army, we are determined to continue to implement the ‘don’t ask, don’t tell’ policy with equity and fairness to all of our soldiers.

“Finally, we continue to expect that all soldiers in the United States Army will be treated with dignity and respect at all times, and will be afforded a safe and secure environment in which to live and work. Harassment of soldiers for any reason, to include perceived sexual orientation, will not be tolerated. We expect commanders at every level to take appropriate action to prevent harassment of or threats against any member of our Army. Once again we are determined to continue to implement the ‘don’t ask, don’t tell’ policy with fairness to all because that is the right thing to do for our soldiers.”

As with all editions of *Hot Topics*, we hope you find this a useful tool in understanding Army policy.


MG John G. Meyer Jr.
Chief of Public Affairs



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WHAT CONGRESS SAID

CONGRESS has determined that the long-standing military law prohibiting homosexual conduct continues to be necessary in the unique circumstances of military service.

Title 10 of the U.S. Code addresses homosexuality in the armed services. Congress said that applicants should not be asked about homosexuality as part of the processing of individuals entering the armed forces, in the absence of a determination by the secretary of defense that such questions are necessary. Applicants for military service are no longer asked about their sexual orientations.

Title 10 recognizes that one of the most critical elements in combat capability is unit cohesion, and affirms that the armed forces must

maintain personnel policies that exclude persons who would create an unacceptable risk to unit cohesion. Title 10 recognizes that military life is fundamentally different from civilian life and concludes that the presence of individuals in the armed forces who engage in homosexual acts creates an unacceptable risk to unit cohesion and standards of morale, as well as to good order and discipline.

In 1993 Congress said that engaging in, attempting to engage in, or soliciting another to engage in homosexual acts is grounds for discharge from the military. Congress said that service by those who have a propensity to engage in homosexual acts creates an unacceptable risk to morale, good order and discipline, and unit cohesion.

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The secretary of the Army signed Army Regulation 600-20, "Army Command Policy," on July 26, 1999. Paragraph 4-19 of the regulation defines the Army's policy on homosexual conduct, which implements section 654 of United States Code's Title 10.

The policy states clearly that suitability to serve in the Army is based on a soldier's conduct and on the ability to meet required standards of duty performance and discipline.

Homosexual conduct is grounds for discharge from the Army. The policy defines homosexual conduct as: an act or a statement by a soldier that demonstrates a propensity or intent to engage in homosexual acts; the solicitation of another to engage in a homosexual act or acts; or a homosexual "marriage" or attempted "marriage."

Informal fact-finding inquiries and administrative-separation procedures are the

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DEFINITIONS

Sexual orientation: A personal, private matter; an abstract preference for persons of a particular sex, as distinct from a propensity or intent to engage in homosexual acts.

Propensity to engage in homosexual acts: A likelihood that a person engages in or will engage in homosexual acts.

Homosexual: A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in or intends to engage in homosexual acts.

Bisexual: A person who engages in, attempts to engage in, has a propensity to engage in or intends to engage in both homosexual and heterosexual acts.

Homosexual act: Any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires. Any bodily contact (for example, handholding, slow dancing, or kissing) that a reasonable person would understand to demonstrate a propensity or intent to engage in such bodily contact.

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COMMANDER'S

When enforcing the Army's policy on homosexual conduct, commanders should:

- Determine if credible information exists that a soldier has engaged in a homosexual act or acts and initiate a fact-finding inquiry into a soldier's possible homosexual conduct only if credible information exists that there is a basis for that soldier's discharge.
- Decide whether or not a fact-finding inquiry is appropriate and, if so, conduct the inquiry personally or appoint an inquiry officer.
- Gather all credible information that directly relates to the grounds for possible discharge. Carefully consider the source of the information and the circumstances under which it was provided in assessing its credibility.
- Be able to explain clearly and specifically which grounds for separation they are attempting to verify and how the information being collected relates to those grounds.
- Limit the inquiry to the actual circumstances directly relevant to specific allegations.
- Advise the soldier of the Army's policy on homosexual conduct and rights under Article 31 (b), UCMJ, if applicable.
- Not ask a soldier about his or her sexual orientation (i.e., do not ask, "Are you a homosexual" or bisexual or heterosexual).

CHECKLIST

- Ask a soldier if he or she has engaged in homosexual conduct only after receiving credible information of homosexual conduct. However, if the soldier chooses not to discuss the matter further, consider other available information.
- Give the soldier an opportunity to present evidence demonstrating that he or she does not engage in homosexual acts and does not have a propensity or intent to do so.
- Ensure that the inquiry is conducted properly and that no abuse of authority occurs.

BOTTOM LINE: Commanders are responsible for the safety of their soldiers.



DEFINITIONS

Homosexual conduct: A homosexual act, a statement by a soldier that demonstrates a propensity or intent to engage in a homosexual act or acts, the solicitation of another to engage in a homosexual act or acts, or a homosexual “marriage” or attempted “marriage.”

Statement by a person that he or she is homosexual or bisexual: Language or behavior that a reasonable person would believe intends to convey the statement that a soldier engages in, attempts to engage in, has a propensity to engage in or intends to engage in homosexual acts.

Credible information: Information is credible when, considering its source and the surrounding circumstances, it supports a reasonable belief that a soldier has engaged in homosexual conduct. Credible information is not just based on a belief or suspicion but must be based on facts.

WHAT IS CREDIBLE INFORMATION ABOUT HOMOSEXUAL CONDUCT?

Credible information about homosexual conduct exists when:

- A reliable person states that he or she observed a soldier engaging in homosexual acts;
- A reliable person hears a soldier saying that he or she is homosexual or bisexual;
- A reliable person hears a soldier say that he or she is “married” to a person of the same sex;
- A reliable person states that he or she heard, observed or discovered a soldier make a spoken or written statement that a reasonable person would believe was intended to convey the fact that he or she engages in or has the propensity or intent to engage in homosexual acts;
- A reliable person states that he or she observed behavior that in the view of a reasonable person amounts to an admission by a soldier that he or she is a homosexual or bisexual.

DON'T ASK,

AR 600-20 “Army Command Policy,” Paragraph 4-19, Homosexual Conduct Policy.

Questions and answers about the Army’s policy on homosexual conduct.

What does “Don’t Ask” mean?

A person’s sexual orientation is considered a personal and private matter that is not a bar to military service unless manifested by homosexual conduct. Upon entry into the Army, applicants may not be asked or required to reveal their sexual orientations. Applicants will not be asked if they have engaged in homosexual conduct. While on active duty, soldiers will not be asked about their sexual orientations unless there is credible information of homosexual conduct.

What does “Don’t Tell” mean?

“Don’t Tell” is the opposite side of the coin from “Don’t Ask.” It means simply that soldiers should not disclose or discuss their sexual orientations or conduct. If a soldier admits publicly to being homosexual, the commander will initiate an informal inquiry or investigation to determine if credible information exists to warrant separation.

What is considered grounds for investigation?

A commander can only begin a fact-finding inquiry or investigation if credible information of possible homosexual conduct exists. This means that before an

DON'T TELL

investigation begins, a commander must have a reasonable belief that:

- A soldier has engaged in a homosexual act.
- A soldier has stated that he or she is homosexual or has otherwise indicated a propensity to engage in homosexual conduct.
- A soldier has “married” or attempted to “marry” a person of the same sex.

How do investigations proceed?

When commanders have credible information, they initiate an inquiry. Commanders are required to consult with legal advisors prior to initiating any investigation into alleged homosexual conduct.

What is NOT credible information?

The following are not credible information:

- Rumors that a soldier is homosexual;
- Others’ opinions that a soldier is homosexual;
- Going to a homosexual bar, reading homosexual publications, associating with known homosexuals or marching in a homosexual-rights rally in civilian clothes;
- Reporting threats or accusations of being homosexual.

What IS credible information?

The following is credible information:

- A statement by a reliable person that the soldier has engaged in a homosexual act;

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WHEN NOT TO START A FACT-FINDING INQUIRY ABOUT POSSIBLE HOMOSEXUAL CONDUCT

- Do not start a fact-finding inquiry into possible homosexual conduct when a soldier reports that he or she is being threatened or harassed because of rumors that he or she is homosexual.
- Do not start a fact-finding inquiry when a soldier is suspected of engaging in homosexual conduct but the only information is the opinion of others that a soldier is a homosexual.
- Do not start a fact-finding inquiry when the inquiry would be based on rumor, suspicion or capricious claims concerning a soldier’s sexual orientation.
- Do not start a fact-finding inquiry when the only information known is an “associational” activity such as going to a homosexual bar, possessing or reading homosexual publications, associating with known homosexuals or marching in a homosexual rights rally in civilian clothes.

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- A statement by a reliable person that he or she heard the soldier state that he or she is homosexual or that he or she “married” or attempted to “marry” a member of the same sex;
- A statement by a reliable person that he or she observed or discovered a soldier saying or writing a statement acknowledging a homosexual act or the intent to engage in a homosexual act.

What can I do if I am threatened or harassed?

A soldier who feels harassed or threatened for any reason should report the harassment or threat at once to his or her commander.

Under DOD and Army policy the fact that a person reports being threatened or harassed because he or she is said or perceived to be a homosexual shall not, by itself, constitute credible information justifying the initiation of an investigation of the threatened

or harassed soldier.

It is Army policy that soldiers can report threats, harassment or violence to the command, free of harm or reprisal. Commanders will take appropriate action to protect the safety of soldiers who report threats or harassment. Appropriate action should include prompt investigation of the threat or harassment itself.

Threats or harassment based on a soldier’s perceived or alleged homosexuality do not, by themselves, constitute credible information justifying an inquiry about possible homosexual conduct by the harassed soldier.

Who can I talk with in confidentiality?

A soldier can discuss any topic regarding sexual orientation with a legal assistance attorney or chaplain. They are generally not required to disclose the contents of a privileged communication or take any actions of which the soldier does not approve.



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preferred methods for commanders to address homosexual conduct. Only a soldier's commander is authorized to initiate fact-finding inquiries into a soldier's alleged homosexual conduct, and then only when the commander has received credible information that there is a basis for that soldier's discharge. A commander may not begin an inquiry solely to find out about a soldier's sexual orientation.

Homosexual conduct is grounds for discharge from the Army.

One of the bedrock points of the standing Army command policy on homosexual conduct is that harassment, threats or violence against soldiers due to real or perceived sexual orientation are not acceptable.

It is Army policy that soldiers can report threats, harassment or violence to the commander, free of harm or reprisal. Commanders should take appropriate action to protect

the safety of soldiers who report threats or harassment.

Under Department of Defense and Army policy, the fact that a person reports being threatened or harassed because he or she is said or perceived to be a homosexual is not, by itself, credible information justifying the initiation of an investigation of the soldier.

The challenge to all soldiers is to comply with the law that prohibits homosexual conduct, while at the same time respecting the privacy and dignity of every soldier.

The Army already conducts widespread training about the policy on homosexual conduct and will be expanding the training in the near future. The lessons learned in training soldiers in other sensitive subjects involving human relations — such as consideration of others, equal employment opportunity and sexual harassment prevention — offer valuable lessons that can be applied to training on the homosexual-conduct policy.



NEW POLICY GUIDELINES

THE following new guidelines are intended to promote proper, consistent and fair application of the law and policy on homosexual conduct, and to ensure training of those responsible for administering and enforcing the policy — commanders, attorneys and investigators.

GUIDELINE: Judge advocates are now required to consult with senior officers at higher headquarters before starting an investigation into alleged homosexual conduct.

COMMENT: In the past the Army had no such requirement. The majority of homosexual-conduct cases involve minimal or no investigation. Therefore, many installation-level attorneys have little expertise in this area and consequently often seek advice from more experienced judge advocates in higher headquarters legal offices. This practice is now institutionalized.

GUIDELINE: Under certain circumstances, commanders must now seek prior authorization at the secretarial level before undertaking a substantial investigation in cases where a service member has made a statement acknowledging homosexuality and does not contest separation. A substantial investigation is one that extends beyond questioning the service member, questioning persons suggested by the service member, and

questioning the member's chain of command. Prior authorization at the secretarial level (Office of the Assistant Secretary of the Army, Manpower and Reserve Affairs) is now required when the investigation is for the purpose of determining:

- whether recoupment of financial benefits is warranted, and
- whether a soldier's statement that he or she is a homosexual may have been fabricated to avoid a service obligation.

COMMENT: In the past there was no requirement for prior secretarial-level approval to begin substantial investigations into admissions of homosexuality. The new policy is intended to ensure appropriate review of any investigation of this nature.

GUIDELINE: Inspectors general are now required to include as a specific item of interest for inspection the training of all people charged with implementing the homosexual-conduct policy — i.e., commanders, attorneys and investigators.

COMMENT: The Army has not previously tasked the IG to inspect homosexual conduct policy training. In the past, the Army trained commanders and attorneys, but not law enforcement personnel, on the homosexual-conduct policy.

REFERENCES

AR 600-20, "Army Command Policy,"
Paragraph 4-19, Homosexual conduct
policy.

Internet address: www.usapa.army.mil

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Title 10, U.S. Code, Section 654.
Policy concerning homosexuality in the
armed forces.

"Review of the Effectiveness of the
Application and Enforcement of the
Department's Policy on Homosexual
Conduct in the Military. Report to
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Under Secretary of Defense for
Personnel and Readiness" (April
1998).
www.defenselink.mil/pubs/rpt040798.html

DOD News Items

"DOD Clarifies 'Don't Ask, Don't Tell.'"
www.defenselink.mil (See News Archive,
Articles, Aug. 13, 1999.)

"Department Issues More Guidelines
Concerning Implementation of Homo-
sexual Conduct Policy."
www.defenselink.mil (See News Archive,
Releases (2), Aug. 13, 1999.)

DOD Directives and Instructions

- DODI 5505.8. "Investigation of Sexual
Misconduct by the Defense Criminal
Investigative Organizations and other DOD
Law Enforcement Organizations."

- DODD 1332.30 "Separation of Regular
and Reserve Commissioned Officers."

- DODD 1332.14 "Enlisted Administrative
Separations."

www.defenselink.mil/pubs/#regs

- Scroll down to "Regulations and Forms";
- Click on "Directives and Instructions."



COMMANDER'S CHECKLIST

What commanders can do if a soldier is threatened or harassed for perceived homosexuality.

Service members should be able to report crimes and harassment free from fear of harm, reprisal, or inappropriate or inadequate response from commanders.

When a soldier reports threats or harassment based on alleged or perceived homosexuality, that soldier's commanders should:

- Take appropriate action to protect the safety of the soldier who reported threats or harassment.
- Promptly investigate the threat or harassment itself, not the victim of the threats or harassment.
- Hold fully accountable the person or persons found to have made threats or engaged in threatening or harassing conduct.
- Keep in mind that threats or harassment based on a soldier's perceived or alleged homosexuality do not by themselves constitute credible information justifying an inquiry about possible homosexual conduct by the harassed soldier.

***BOTTOM LINE:
The safety of all soldiers
is a command issue.***

